



CONNECTICUT INNOCENCE PROJECT

State of Connecticut
DIVISION OF PUBLIC DEFENDER SERVICES

c/o McCarter & English
CityPlace 1, 36th Floor
185 Asylum Street
Hartford, CT 06103
e-mail: Karen.A.Goodrow@jud.ct.gov
(860) 275-6140 Telephone
(860) 275-6141 Fax

KAREN A. GOODROW, ESQ.
DIRECTOR

TESTIMONY OF KAREN A. GOODROW, DIRECTOR, CONNECTICUT INNOCENCE PROJECT

Raised Bill No. 5501 *An Act Concerning Eyewitness Identification Procedures*

Judiciary Committee Public Hearing - March 16, 2012

My name is Karen Goodrow and I am the Director of the Connecticut Innocence Project, which is a part of the Division of Public Defender Services. **We support *Raised Bill No. 5501, An Act Concerning Eyewitness Identification Procedures*** which would mandate sequential and double blind administration of photographic arrays and live lineups, except that when double blind is not practical, the photo lineup shall be conducted by the use of a folder shuffle method, computer program or other comparable method. The **Raised Bill** embodies the legislative recommendations of the *Eyewitness Identification Task Force*, and also provides for training and other policy reforms to insure the reliability of identification procedures.

As has been demonstrated by the exoneration of James Calvin Tillman, misidentification by eyewitnesses accounts for a large majority of the wrongful convictions occurring in our justice system. The new bill requires double blind administration “when practicable”, and an alternative, when not practicable. Also, the Raised Bill requires the use of sequential viewing of photographs or persons, rather than simultaneous. The purpose of Raised Bill No. 5501 is to insure that law enforcement consistently utilize best practices to avoid misidentifications and wrongful convictions of the innocent.

Significant research in the field of eyewitness identification, particularly by Professor Gary Wells of the University of Iowa, indicates that the risks of mistaken eyewitness identification are reduced when these techniques are used. Without the “double-blind” or blind procedures, it has been shown that awareness of the actual suspect by the administrator can result in inadvertent verbal and non-verbal cues that influence the witness to select the actual suspect. Simultaneous presentation of the subjects frequently results in identification of the subject who most closely resembles the perpetrator, regardless of whether or not it is the right person.

The new bill embodies the unanimous recommendations of the *Report of the Connecticut Eyewitness Identification Task Force*. Task Force members consisted of all of the criminal justice stake-holders, including the Office of the Chief State's Attorney, the Office of Chief Public Defender, the Victim's Advocate, the judiciary, law enforcement and the Connecticut Innocence Project. The Task Force met on numerous occasions, heard from various experts in the field, reviewed relevant information from the field, and assessed the concerns of all of its members. The result of this carefully deliberative process was the recommendations contained in the new bill. All Task Force members shared the common goal of protecting the innocent through improvements in the eye-witness identification process.

In June, 2006, DNA technology freed James Calvin Tillman from eighteen and a half years of imprisonment for crimes which he did not commit. His wrongful conviction was largely the result of misidentification. In January, 2008, through the same DNA technology, the real perpetrator was identified and arrested.

To date, there have been 289 post-conviction DNA exonerations nationwide. (www.InnocenceProject.org) It is poignantly clear that misidentification accounts for the vast majority of wrongful convictions. Eyewitness research has linked two basic factors with misidentifications: unintentional suggestion to the witness and "relative judgment process", which refers to the tendency when viewing a simultaneous photo array for the witness to pick out the photo of the person who looks most like the real perpetrator relative to the other people in the array. States continue to pass legislation which will reduce the likelihood of misidentification through the use of "best practices" in identification procedures. These best practices include two basic components: sequential photo arrays and double-blind (or blind) administration.

Sequential Photo Arrays: Photos (or individuals in live lineups) are presented to the witness one at a time, rather than simultaneously. Research demonstrates that sequential photo lineups discourage relative judgment and encourage absolute judgments of each person presented, because eyewitnesses are unable to see the subjects all at once and are unable to know when they have seen the last subject.

Double Blind or Blind Procedure: When practicable, the person administering the photo (or individual) lineup does not know who the suspect is, and is not in a position to unintentionally influence the witness's selection. In situations where double blind administration is impracticable, the use of a blind procedure can also insure that the witness is not unintentionally influenced. Blind administration can be achieved through the shuffle file method, computer program, or some comparable method. Research demonstrates that persons conducting experiments of any kind in which they know the desired or correct outcome, often unwittingly cue the subject of the experiment or misinterpret the results based on their knowledge or desired outcome. If the administrator of a photo array does not know the identity of the suspect, or cannot observe when the witness is viewing the suspect, he/she cannot provide any cues to eyewitnesses. It is important to understand that this recommendation does not presume any deliberate impropriety by law enforcement.

We **support** and urge adoption of the following additional best practices, as set forth in **Raised Bill No. 5501**:

1. **Uniform Policies and Guidelines:** POST and Connecticut State Police shall promulgate uniform mandatory policies and appropriate guidelines for conducting eyewitness identification procedures.
2. **Specific Instructions to the Eyewitness:** The witness shall be told that he will be asked to view an array of photographs or group of persons, one at a time; it is as important to exclude an innocent person as it is to identify the perpetrator; the person in the photo array/line-up may not look the same as on the date of the offense due to changes; the perpetrator may or may not be in the array or lineup; the eyewitness should not feel compelled to make an identification; the eyewitness should take as much time as needed in making a decision; and that the police will continue to investigate, regardless of whether the witness makes an identification. Additional instructions may be promulgated by POST/CSPT guidelines and policies.
3. **Communication to the witness:** No communication either verbal or non-verbal should be made to the witness by the administrator or by anyone else, which communication may influence the identification procedure.
4. **Non-suspect fillers:** Photos of individuals in the photo line-up, or live individuals in the live line-up, who are not the suspect are called "fillers". These photos/individuals should be chosen to minimize suggestiveness that might point toward the suspect. In other words, the photos/individuals of non-suspects should generally be chosen to resemble the witness's description of the perpetrator. When multiple line-ups are shown to a single witness, the fillers should be different from the ones previously used.
5. **Eyewitness confidence:** An eyewitness's statement of confidence should be assessed immediately after the identification, and prior to any information given to the witness about the identification to protect against artificially inflated confidence levels.
6. **Multiple identification procedures:** Avoid multiple identification procedures in which the same witness views the same suspect more than once. Research demonstrates that multiple procedures create the potential for suggestiveness and the potential to contaminate the witness's memory.
7. **Written record of the identification procedures:** To insure reliability and accuracy, written records should be maintained of all identification and non-identification procedures, including the date and time of the procedure, order of photographs, individuals present, photographs utilized, identification information, and source of photographs.
8. **Continuation of the Eyewitness Identification Task Force:** The Task Force recommends that it continue in existence to assist POST, CSPT and all criminal justice stake-holders in the training, development and evaluation of best practices.